

**Introduced by Senator Machado**February 15, 2002

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An act to amend Sections 8505.17, 8616, 8616.4, 8616.5, 8616.7, and 8662 of, and to add Section 8617.1 to, the Business and Professions Code, relating to pest control.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1463, as introduced, Machado. Structural pest control.

Existing law authorizes the Structural Pest Control Board to regulate the practice of structural pest control operators in this state. Existing law, among other things, authorizes the Director of Pesticide Regulation to designate county agricultural commissioners to carry out inspections, routine investigations and after proper training, impose administrative fines or temporarily suspend a structural pest control licensee or registered company from working in a county.

This bill would authorize the agricultural commissioner to impose an administrative fine ranging from \$25 to \$500 or require the licensee to attend a board-approved course for specified violations. The revenues from these fines would be deposited into the Civil Penalties Account and would be available for use by the board, upon appropriation, for program enforcement purposes.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 8505.17 of the Business and Professions
- 2 Code is amended to read:



1 8505.17. (a) There is hereby created in the State Treasury a  
2 special fund to be known as the Structural Pest Control Education  
3 and Enforcement Fund. Funds derived from the pesticide use  
4 report filing fee provided for in Section 8674 and all proceeds from  
5 civil penalties collected by the board pursuant to Section 8617  
6 shall be deposited in the Education and Enforcement Account  
7 which is hereby created in the fund. The account shall be used by  
8 the board (1) for the purposes of training as provided in Section  
9 8616, (2) for reimbursement to the Director of Pesticide  
10 Regulation for work performed as the agent of the board pursuant  
11 to Sections 8616, 8616.4, ~~and~~ 8617, *and 8617.1 of this code*, and  
12 Section 15202 of the Food and Agricultural Code, and for cases  
13 referred to the board pursuant to subdivision (b) of Section 8616.5,  
14 and (3) for reasonable expenses incurred by the Disciplinary  
15 Review Committee. There is no reimbursement from this fund for  
16 inspections and routine investigations.

17 (b) The board may withhold funds from its agent if it is not  
18 satisfied that its agent has corrected the problems which resulted  
19 in a suspension as provided in Section 8616.6. The authority to  
20 withhold funds shall be limited only to the withholding of an  
21 amount otherwise due the agent for reimbursable activities  
22 performed in the county or counties for which a notice has been  
23 filed pursuant to Section 8616.6.

24 (c) Registered structural pest control companies shall prepare  
25 and submit to the county agricultural commissioner a monthly  
26 report of all pesticides used in that county. The report shall be on  
27 a form approved by the Director of Pesticide Regulation and shall  
28 contain the name and registration number of each pesticide, the  
29 amount used, and the number of applications made. The report  
30 shall be submitted to the commissioner by the 10th day of the  
31 month following the month of application. Each pesticide use  
32 report or combination of use reports representing a registered  
33 structural pest control company's total county pesticide use for the  
34 month shall have affixed thereto a pesticide use stamp issued by  
35 the board in the denomination fixed by the board in accordance  
36 with Section 8674 as the pesticide use report filing fee. The board  
37 shall provide for the sale of these stamps and for the refund of  
38 moneys paid for stamps which are returned to it unused. When a  
39 registered structural pest control company performs no pest  
40 control during a month in a county in which it has given notice



1 pursuant to Section 15204 of the Food and Agricultural Code, the  
2 registered company shall submit a use report stating this fact to the  
3 commissioner. No pesticide use stamp is required on negative use  
4 reports.

5 (d) All other proceeds from civil penalties collected by the  
6 board shall be deposited in the Civil Penalties Account which is  
7 hereby created in the fund. These funds shall be available to the  
8 board upon appropriation by the Legislature for the purposes of  
9 enforcing this chapter.

10 SEC. 2. Section 8616 of the Business and Professions Code  
11 is amended to read:

12 8616. The Director of Pesticide Regulation shall be  
13 designated by the board as its agent for the purposes of carrying  
14 out Section 8616.4. The board and the Department of Pesticide  
15 Regulation shall jointly develop a training program specifically  
16 relating to the various aspects of structural pest control and train  
17 all county agricultural commissioners and other personnel  
18 involved in structural pest control investigations and enforcement.  
19 No disciplinary action pursuant to Section 8617 *or* 8617.1 may be  
20 taken by a county agricultural commissioner until training has  
21 been completed.

22 SEC. 3. Section 8616.4 of the Business and Professions Code  
23 is amended to read:

24 8616.4. The Director of Pesticide Regulation shall designate  
25 county agricultural commissioners as his or her representatives to  
26 carry out the provisions of Sections 8616.5, 8616.7, ~~and~~ 8617, *and*  
27 8617.1. The Director of Pesticide Regulation shall enter into a  
28 contract specifying their responsibilities and providing for  
29 reimbursement in accordance with Section 8505.17.

30 SEC. 4. Section 8616.5 of the Business and Professions Code  
31 is amended to read:

32 8616.5. (a) The county agricultural commissioner shall be  
33 the lead agency for inspections and routine investigations of  
34 pesticide use by the board licensees and registered companies, and  
35 of persons engaged in unlicensed structural pest control. When a  
36 matter is referred to the board for action, the board shall be the lead  
37 agency and may require that the commissioner assist in any  
38 investigation.

39 (b) The board and the Director of Pesticide Regulation shall  
40 jointly develop the list of the types of investigations to be

1 conducted by the commissioner that may result in the suspension  
2 of a license or company registration, or the imposition of a fine,  
3 pursuant to ~~Section~~ *Sections 8617 and 8617.1* and the list of the  
4 types of violations that the commissioner shall refer to the board  
5 for disciplinary action.

6 (c) As used in subdivision (a), the term “routine  
7 investigations” means all investigations of pesticide misuse by a  
8 board licensee or registered company except (1) investigation of  
9 misuse incidents that are referred to the board for disciplinary  
10 action or that are the basis for county actions to suspend or fine  
11 structural pest control licensees or registered companies in  
12 accordance with the lists promulgated pursuant to subdivision (b),  
13 or (2) any investigation performed by the county agricultural  
14 commissioner that has been requested by the board and involves  
15 exclusively a violation of this code.

16 SEC. 5. Section 8616.7 of the Business and Professions Code  
17 is amended to read:

18 8616.7. When a county agricultural commissioner is acting,  
19 pursuant to Section 8616.4, only the commissioner may conduct  
20 inspections and routine investigations pursuant to Section 8616.5  
21 and take disciplinary action pursuant to ~~Section~~ *Sections 8617 and*  
22 *8617.1*. Except as otherwise provided, nothing in this section shall  
23 be construed as limiting or excluding the assistance provided to the  
24 board by the Division of Investigation under Sections 155 and  
25 159.5 other than by board personnel.

26 SEC. 6. Section 8617.1 is added to the Business and  
27 Professions Code, to read:

28 8617.1. (a) When a licensed employee of a registered  
29 company is found in violation of Section 8617 of this code or  
30 Chapter 2 (commencing with Section 12751), Chapter 3  
31 (commencing with Section 14001), Chapter 3.5 (commencing  
32 with Section 14101, or Chapter 7 (commencing with Section  
33 15201) of the Food and Agricultural Code, the county agricultural  
34 commissioner may levy an administrative fine ranging from  
35 twenty-five dollars (\$25) up to five hundred dollars (\$500) or  
36 direct the licensee to attend and pass a board approved course of  
37 instruction, or both, for each violation of this chapter, any  
38 regulation adopted pursuant to this chapter, or any violation of  
39 Chapter 2 (commencing with Section 12751), Chapter 3  
40 (commencing with Section 14001), or Chapter 7 (commencing



1 with Section 15201) of the Food and Agricultural Code, or any  
2 regulations adopted pursuant to those chapters, relating to  
3 pesticides.

4 (b) Fines collected pursuant to this section shall be deposited  
5 into the Civil Penalties Account and shall be available to the board  
6 upon appropriation by the Legislature for the purposes of  
7 enforcing this chapter.

8 SEC. 7. Section 8662 of the Business and Professions Code  
9 is amended to read:

10 8662. (a) Whenever the right of a structural pest control  
11 licensee or registered company to make pesticide applications is  
12 to be suspended or the licensee, registered company, or unlicensed  
13 individual is to be fined pursuant to ~~Section~~ *Sections 8617 and*  
14 *8617.1*, and if the person upon whom the commissioner imposed  
15 a fine or suspension requested and appeared at a hearing before the  
16 commissioner in accordance with Section 8617, the party to be  
17 suspended or fined may appeal to the Disciplinary Review  
18 Committee by filing a written appeal with the committee within 10  
19 days of receipt of the fine or suspension order.

20 (b) The following procedures shall apply to the appeal:

21 (1) The appeal shall be in writing and signed by the appellant  
22 or his or her or its authorized agent, state the grounds for the  
23 appeal, and include a copy of the commissioner's decision. The  
24 appellant shall file a copy of the appeal with the commissioner at  
25 the same time it is filed with the committee.

26 (2) Any party may, at the time of filing the appeal or within 10  
27 days thereafter, or at a later time prescribed by the committee or  
28 its designee, present the record of the hearing, including written  
29 evidence that was submitted at the hearing and written argument  
30 to the committee stating the grounds for affirming, modifying, or  
31 reversing the commissioner's decision.

32 (3) The committee or its designee may grant oral argument  
33 upon application made at the time written arguments are filed. If  
34 an application to present an oral argument is granted, written  
35 notice of the time and place for the oral argument shall be given  
36 each party at least 10 days before the date set therefor. The times  
37 may be altered by mutual agreement of the appellant, the  
38 commissioner, and the committee.

39 (4) At any time written evidence is submitted to the committee,  
40 a copy shall be immediately provided to the other party.

1 (5) The committee shall decide the appeal on the record of the  
2 hearing, including the written evidence and the written argument  
3 described in paragraph (2) that the committee may have received.  
4 If the committee finds substantial evidence in the record to support  
5 the commissioner's decision, the committee shall affirm the  
6 decision.

7 (6) The committee shall render its written decision within 45  
8 days of the date of appeal or within 15 days from the date of oral  
9 arguments. If the committee does not reach a decision in the time  
10 required in this subdivision, the order issued pursuant to ~~Section~~  
11 *Sections 8617 and 8617.1* shall be null and void.

12 (7) On an appeal pursuant to this section, the committee may  
13 sustain, modify by reducing the time of suspension or the amount  
14 of the fine levied, or reverse the decision. A copy of the  
15 committee's decision shall be delivered or mailed to each party.

16 (8) Review of the decision of the committee may be sought by  
17 the licensee, registered company, or unlicensed individual  
18 pursuant to Section 1094.5 of the Code of Civil Procedure.

